

## AMENDMENTS TO RULE 32

RULE 32 is amended as follows:

### RULE 32. Use of Depositions in Court Proceedings<sup>3</sup>

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions;

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by Federal Rules of Evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(4) (6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court,

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<sup>3</sup>As provided in 28 U.S.C. § 2641(a), the Federal Rules of Evidence apply to all actions in this court, except as provided in 28 U.S.C. §§ 2639 and 2641(h) or the rules of this court.

to allow the deposition to be used.

A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, it was unable through the exercise of diligence to obtain counsel to represent it at the taking of the deposition; nor shall a deposition be used against a party who, having received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the [~~officer~~ **offeror**] to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action has been brought in any court of the United States or of any state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor. A deposition previously taken may also be used as permitted by the Federal Rules of Evidence.

(b) Objections to Admissibility. Subject to the provisions of Rule 28(b) and subdivision [~~(c)(3)~~] **(d)(3)** of this rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

**(c) Form of Presentation.** Except as otherwise directed by the court, a party offering deposition testimony pursuant to this rule may offer it in stenographic or non-stenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered. On request of any party in a case tried before a jury, deposition testimony offered other than for impeachment purposes shall be presented in nonstenographic form, if available, unless the court for good cause orders otherwise.

[~~(e)~~ **(d)**] Effect of Errors and Irregularities in Depositions. \*\*\*

(As amended July 28, 1988, eff. Nov. 1, 1988; \_\_\_\_\_, 2000, eff. \_\_\_\_\_,

ADVISORY COMMITTEE NOTE

The provisions in subdivision (a) of the current CIT and federal rules are substantially the same, with some differences. The language in subparagraph 3(A), allowing the deposition of a witness to be used in the CIT if the witness is "out of the United States. . ." differs from the Fed. R. Civ. P. which allows use in the district court if the party is "at a greater distance than 100 miles from the place of trial or hearing or is out of the United States . . . ." The CIT hears actions arising at any port in the country, in contradistinction to the several district courts which, in general, hear actions arising within (or having contacts within) their geographical districts. Although the CIT can, and does, hear cases in courtrooms throughout the country, a large percentage are heard in New York. Adoption of the 100-mile rule to CIT practice could lead to a considerable number of depositions being offered in lieu of live testimony. In the Committee's view, the national jurisdiction of the CIT warrants retaining the current rule.

The Fed. R. Civ. P. sets forth two circumstances (deponent unable to obtain counsel; party with less than 11 days' notice files for a protective order requesting deposition not be held) where a deposition taken without leave of court shall not be used against a party. The Committee recommends the CIT rule be brought into conformity.

Fed. R. Civ. P. 32(c) relates to the form in which deposition testimony may be offered (e.g., stenographic or nonstenographic form). A comparable provision does not exist in the current CIT rule. The Committee recommends that the CIT rule be brought into conformity, particularly if the CIT adopts Fed. R. Civ. P. 30(b)(2), as recommended. The Advisory Committee Note to Fed. R. Civ. P. 32(c) suggests that the rule contemplates the possible use of video-recorded and audio-recorded depositions:

**Subdivision (c).** This new subdivision, inserted at the location of a subdivision previously abrogated, is included in view of the increased opportunities for video-recording and audio-recording of depositions under revised Rule 30(b). Under this rule a party may offer deposition testimony in any of the forms authorized under Rule 30(b) but, if offering it

in a nonstenographic form, must provide the court with a transcript of the portions so offered. On request of any party in a jury trial, deposition testimony offered other than for impeachment purposes is to be presented in a nonstenographic form if available, unless the court directs otherwise. Note that under Rule 26(a)(3)(B) a party expecting to use nonstenographic deposition testimony as substantive evidence is required to provide other parties with a transcript in advance of trial.

Fed. R. Civ. P. 32(c) advisory committee note (1993 Amendments).